

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

DILLARD’S, INC.,

Plaintiff,

v.

BLAINE MCNUTT,

Defendant.

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Civil Action No. 19-227

COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

DILLARD’S, INC. (“Dillard’s”), Plaintiff, alleges as follows:

Parties

1. Dillard’s is a foreign corporation duly authorized to do business in the state of Texas.

2. McNutt is an individual residing in El Paso County, Texas and may be served at 764 Azalea Pl., El Paso, Texas 79922 or wherever he may be found.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332. There is complete diversity between Plaintiff and Defendant, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest or costs. Plaintiff is a Delaware corporation duly organized and existing pursuant to the laws of the State of Delaware and has its principal place of business in Arkansas so Plaintiff is a citizen of the States of Delaware and Arkansas. Defendant is an individual residing in El Paso County, Texas so Defendant is a citizen of the

State of Texas. This suit involves a claim for breach of contract. Defendant failed to perform its obligations under the contract. Although the amount of damage Plaintiff has suffered at this point is not known with certainty, Plaintiff is required under the contract to pay Defendant \$80,000 for his performance. In addition, Plaintiff is entitled to recover its attorneys' fees incurred in this action from Defendant, which if this case goes to trial will likely be approximately \$40,000.

4. Venue is proper in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. §1392(b)(2) as a judicial district where a substantial part of the events or omissions giving rise to the claim occurred.

Factual Background and Allegations Common to All Causes of Action

5. Effective June 24, 2019, the parties entered into a Settlement Agreement and Release (the "Contract"). Under the terms of the Contract, McNutt was required to deliver shirts to counsel for Dillard's which he has not done. Under the terms of the Contract Dillard's was required to pay a certain sum which it has not done, but Dillard's will, with the permission of the Court, pay that sum into the registry of the Court, for subsequent distribution as determined by the Court in accordance with the resolution of this suit.

6. McNutt breached the Contract by failing to deliver the shirts as required.

Cause of Action

7. Dillard's brings this action against McNutt for breach of contract. Dillard's seeks judgment against McNutt for breach of contract and for the recovery of its resulting damages suffered as a result of that breach. In addition, Dillard's further seeks judgment for the recovery of its reasonable attorney fees and costs of court incurred in this action pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code. Service of this petition upon McNutt shall constitute Dillard's presenting the claim brought in this action to McNutt.

Prayer for Relief

WHEREFORE, Dillard's requests that McNutt be cited to appear and answer herein; and that after hearing or trial Dillard's be awarded judgment for the following:

- a. Judgment against McNutt for all damages suffered by Dillard's as a result of McNutt's breach of the Contract plus pre-judgment and post judgment interest;
- b. Reasonable attorneys' fees incurred through the conclusion of this action, through appeal, if such occurs, and costs; and
- c. Such other and further relief to which Dillard's may be justly entitled.

Respectfully submitted,

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